

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

R. WAYNE JOHNSON,	:	
	:	Case No. 2:17-cv-01001
Plaintiff,	:	
	:	JUDGE ALGENON L. MARBLEY
v.	:	
	:	Magistrate Judge Deavers
TIMBERWOLF LITIGATION	:	
	:	
Defendant.	:	

OPINION & ORDER

This matter is before the Court on the Magistrate Judge’s February 26, 2018 Report and Recommendation, recommending that Plaintiff be assessed the full filing fee of \$400 and that this action be dismissed without prejudice. Upon independent review by the Court, and for the reasons set forth below, the Court hereby **DENIES** the Report and Recommendation (ECF No. 4) and will allow Mr. Johnson an additional thirty days to either pay the \$400 filing fee or submit an application to proceed in forma pauperis.

I. BACKGROUND

On November 15, 2017, Plaintiff R. Wayne Johnson filed a Complaint against Timberwolf Litigation Research Serv. LLC. (ECF No. 1). In conjunction with filing his Complaint, Mr. Johnson did not pay a filing fee, nor did he submit an application to proceed in forma pauperis. On November 17, 2017, the Magistrate Judge issued an Order requiring Mr. Johnson to pay the requisite \$400 filing fee within thirty days, or alternatively, submit an application to proceed in forma pauperis. (ECF No. 2). The Magistrate Judge cautioned Mr. Johnson that failure to comply with the Order would result in dismissal of the litigation. (*Id.*). The November Order was returned to the Court because Plaintiff’s name and inmate number did not match any incarcerated individual. (ECF No. 3). On February 26, 2018, the Magistrate

Judge issued a Report and Recommendation stating that Court's personnel's attempt to identify Plaintiff failed and recommending that Mr. Johnson be assessed the full \$400 filing fee and that this action be dismissed without prejudice. (ECF No. 4). Mr. Johnson filed an Objection to the Magistrate Judge's Report and Recommendation on May 12, 2018. (ECF No. 3).

II. LAW AND ANALYSIS

If a party objects within the allotted time to a report and recommendation, the Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which the objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). A party's objections “must be clear enough to enable the district court to discern those issues that are dispositive and contentious.” *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) (citation omitted).

Here, the Objection appears to be more akin to an Amended Complaint, but “[a] document filed *pro se* is to be liberally construed” so the Court will construe it as an objection. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations omitted). The Magistrate Judge correctly concluded that Mr. Johnson must either (1) pay the \$400 filing fee; or (2) file an application to proceed in forma pauperis under 28 U.S.C. § 1915. *See In re Prison Litig. Reform Act*, 105 F.3d 1131, 1131 (6th Cir. 1997) (“When a prisoner files a complaint in the district court, the inmate must either pay the entire filing fee, or request leave to proceed in forma pauperis ‘without prepayment of fees or security therefor’ under 28 U.S.C.A. § 1915(a)(1).”).

Because Mr. Johnson did not receive the initial order directing him to pay the filing fee or file a motion to proceed in forma pauperis, however, the Court will not assess the fee or dismiss the action at this time. Instead, the Court will allow Mr. Johnson an additional thirty-days to

either (1) pay the \$400 filing fee; or (2) file an application to proceed in forma pauperis under 28 U.S.C. § 1915. Mr. Johnson is cautioned that failure to do either of those options within the allotted time frame will result in dismissal of his case.

III. CONCLUSION

For these reasons, the Report and Recommendation (ECF No. 2) is **DENIED**. Mr. Johnson is hereby **ORDERED** to either (1) pay the requisite \$400 filing fee within **THIRTY (30) DAYS** from the date of this Order; **or** (2) file an application to proceed in forma pauperis under 28 U.S.C. § 1915 within **THIRTY (30) DAYS** from the date of this Order. Failure to do either of these alternate options will result in dismissal of this case.

IT IS SO ORDERED.

/s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: June 1, 2018